State of Michigan
In the Supreme Court

Appeal from the Michigan Court of Appeals
Judges: Cooper, P.J., and Markey and Meter, JJ.

People of the State of Michigan,
Plaintiff-Appellant,

vs

Gevon Ramon Davis,
Defendant-Appellee.

Supreme Court No. 125436

Court of Appeals No. 242207

Circuit Court No. 02-009635-FH

Brief on Appeal –Appellant

Oral Argument Requested

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Table of contents

Index of authorities

other authorities

Statement of jurisdiction

Pursuant to MCR 7.302, *et seq.*, the People of Michigan, Appellant requested Michigan Supreme Court review of the Court of Appeals *per curiam* opinion entered in *People v Davis,* CA 242207 (Nov. 25, 2003). [Appendix 1a-2a] Leave to appeal was granted by this Court in an order entered June 3, 2004. *People v Davis*, 470 Mich 870 (2004).

Standards of Review

The standards of review will be set forth in the argument portion of this brief, *infra.*

Statement of question presented

Should this Court overrule *People v Cooper*, 398 Mich 450 (1976) and thus reverse the trial court below and permit the prosecution of defendant as permitted by the doctrine of dual sovereignty.

Defendant-Appellee says: No

Plaintiff-Appellant says: Yes

Statement of facts

The facts of this case are relatively straight forward. The Genesee County Prosecutor charged defendant Davis in two counts for the theft of a 1999 Chevy Malibu automobile, valued at $8,200.00. Count I: UDAA, contrary to MCL 750.413, felony, 5 years; Count II: Receiving and concealing stolen property--$1000 or more but less than $20,000, felony, 5 years and or $10,000, or 3 times the value of the property, whichever is greater, contrary to MCL 750.535(3)(a).

Defendant drove the stolen auto to Kentucky and was apprehended and charged there with theft by unlawful taking or disposition over $300.00 contrary to KY Rev Stat Ann 514.030. Defendant pled guilty to an added charge of attempted theft by unlawful taking and was sentenced to 1 year in jail. Defendant's sentence was actually a conditional sentence and he did not serve one day in jail in the state of Kentucky. [Appendix 3a-5a]

The Genesee County charges stem from the same event that led to the charges in Kentucky. Defendant filed a motion in the Genesee County Circuit Court for dismissal arguing that successive prosecutions in different states violated his right against double jeopardy. The trial Court, James T. Corden, J, sitting by assignment, dismissed the charges and held that under *People v Cooper*, 398 Mich 450, 460-461 (1976) successive prosecutions in different states violate the constitutional prohibition against double jeopardy. The prosecutor appealed the dismissal to the Michigan Court of Appeals requesting reinstatement of the charges. The Court of Appeals affirmed the dismissal in a *per curiam* opinion in *People v Davis*, CA 242207 (Nov. 25, 2003). The Court held it was bound by *People v Cooper*, 398 Mich 450 (1976) but observed that in *People v Hermiz*, 462 Mich 71, 87 (2000) Justice Cavanagh opined that *Cooper's* continuing

validity was suspect, citing also *People v Mackle*, 241 Mich App 584, 594 (2000). Referring to *People v Mezy*, 453 Mich App 269, 280-281 (1996) the Court of Appeals also pointed out that three members of the Michigan Supreme Court had voted to overrule *People v Cooper*.

The case *sub judice* presents this Court with the opportunity to revisit the *Cooper* decision and determine whether the time has come to overrule it and bring Michigan jurisprudence in line with the majority rule permitting criminal prosecutions under the dual sovereignty theory.

Issue

Should this Court overrule People v Cooper, 398 Mich 450 (1976) and thus reverse the trial court below and permit the prosecution of defendant as permitted by the doctrine of dual sovereignty.

Standards of review

The Michigan Supreme Court reviews double jeopardy issues *de novo*. *People v Nutt*, 469 Mich 565 (2004). Where the issue before the court involves questions of constitutional law and statutory interpretation the court should resolve the same by applying its independent judgment. It is further the duty of a reviewing court to adopt a rule of law which is most persuasive in light of precedent, reason and policy. See e.g., *Todd v State*, 917 P2d 672 (Alaska 1996).

The decisions also indicate that the grant or denial of a motion to dismiss on double jeopardy grounds should be immediately appealable. See e.g., *Bowling v State*, 470 A2d 797, n 4 (1984) and citations.

Argument

Twenty eight years ago in *People v Cooper*, 398 Mich 450 (1976), this court held that the double jeopardy provision of the Michigan Constitution, Const 1963, art 1 sec. 15, prohibited a second prosecution for an offense arising out of the same criminal act unless it appeared from the record that the interests of the state of Michigan and the jurisdiction that initially prosecuted were substantially different. The court held that a defendant who had previously been acquitted of federal bank robbery charges could not be subsequently convicted in Michigan of bank robbery and assault with intent to rob while armed, where the state and federal charges arose out of the same criminal act. The court rejected defendant's argument that all successive prosecutions by two sovereigns

for the same act are prohibited. The court found that only where the state and federal laws are framed to protect the same social interests will the interest of the federal and state governments in prosecuting a criminal act coincide and will prosecution by one sovereign satisfy the need of the other. The court opined that the interests of the state in protecting its social interest, and of the defendant in not being compelled twice to stand trial, were best accommodated by an interest analysis test. The court concluded that the interests to be protected by the federal bank robbery statute were not substantially different from those sought to be protected by the two state statutes of which defendant stood convicted, the court held that the defendant was placed in double jeopardy and reversed his convictions on the Michigan counts.

In *People v Gay*, 407 Mich 681 (1980) this court, following the *Cooper* decision, judgment reversed in part on other grounds, held that the interest of the state in trying the defendants for murder did not differ substantially from the interest previously addressed in the defendant's federal prosecution and thus found that the subsequent state trial violated the state constitutional prohibition against double jeopardy. The court explained that the intent of the *Cooper* analysis was to focus on and isolate differences in maximum sentences between the state and federal jurisdictions. The court further explained, it had been demonstrated that the maximum sentences for a killing that occurred during a bank robbery did not substantially differ in the federal penalties provided by their state counterparts. The court declared that the dissimilarity between mandatory life and discretionary life did not amount to a "greatly disparate" sentence causing the interests of the two sovereign jurisdictions to be at variance. Concerning the second *Cooper* criterion, the court noted, that there was no basis on which to conclude that a federal

court could not adequately satisfy the state interest in obtaining a conviction. It was also observed that the record failed to reflect an inability or unwillingness to cooperate between state and federal criminal justice officials. In fact, the court concluded, that the federal investigation and prosecution of the case were obviously a superior effort, given the fact that much of the evidence subsequently introduced in the state trial was the result of the original FBI investigation and federal trial preparation.

Eight years ago, three members of this court questioned the continuing validity of *People v Cooper* in *People v Mezy*, 453 Mich 269 (1996). The late Justice Brickley said that whether or not members of the court feel that *Cooper* was wrongly decided, the principles of *stare decisis* require its continued vitality until and unless review is required for the resolving of the case before the court. The people submit that the case at bench provides this Honorable Court with the opportunity to reconsider *People v Cooper.*

The case *sub judice* sits at the cross-roads of two complicated bodies of law: the dual sovereignty exception to double jeopardy, and the sovereign power of the state of Michigan.

The Double Jeopardy Clause provides that "[n]o person shall ... be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. Amend. V. This constitutional guarantee provides three forms of protection: It prohibits "a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense." *Dep't of Revenue v Kurth Ranch*, 511 US 767, 769 n. 1 (1994). The Michigan Constitution, Const. 1963, art. 1. sec. 15, "is essentially identical to its federal counterpart." *People v Nutt*, 469 Mich 565 (2004).

The Double Jeopardy Clause, however, contains a significant exception. That is, multiple prosecutions are permitted when they are carried out by separate sovereigns. The rational for this principle rests with our traditional concept of what constitutes a "crime." At common law, a crime was defined as "an offense against the sovereignty of the government. " Accordingly, a single act that violates the laws of two sovereigns constitutes two separate crimes. In general, prosecutions of a defendant by separate sovereigns, no matter how similar in character, do not violate the Fifth Amendment's Double Jeopardy Clause. *United States v Trammell*, 133 F 3d 1343, 1349 (CA 10, 1998); *United States v Guzman*, 85 F3d 823, 836 (CA 1, 1996). As a result, successive prosecutions by multiple sovereigns for that single act do not violate the Double Jeopardy Clause. *Heath v Alabama*, 474 US 82, n. 88 (1985). The decisions also state that pursuant to the doctrine of dual sovereignty neither constitutional double jeopardy clause is offended by successive punishments at the hands of separate sovereigns so long as each sovereign punished the defendant but once. See e.g., *State v Kenny*,145 P 415 (Wash. 1915); *Bartkus v Illinois*, 359 US 121, 136-38 (1959).

States however, may override the doctrine by either state constitution or by statute by providing they will not prosecute a defendant who has already been prosecuted for the same offense elsewhere. *State v Ivie*, 961 P2d 941 (Wash. 1998); Anno: *Conviction or acquittal in federal court as bar to prosecution in state courts for state offense based on same facts—modern view*, 6 ALR 4th 802, 826-24 (1981), superceded by 97 ALR 5th 201 (2002-2004).

In Michigan, our Legislature abrogated the dual sovereignty doctrine with respect to illegal drug prosecutions only. Pursuant to MCL 333.7409 where a violation of the

Michigan Public Health Code is also a violation of the law of another jurisdiction, a conviction or acquittal in the other jurisdiction "for the same act" prohibits prosecution in Michigan. Under the jurisprudence, the defendant has the burden of demonstrating, by a preponderance of the evidence, that the prosecution is barred by the statute. *People v Mezy*, 453 Mich 269 (1996); *People v Hermiz*, 462 Mich 71 (2000) (equally divided Court); *People v Avila*, 229 Mich App 247 (1998). Where the dual sovereignty claim is asserted by the state, the defendant has the initial burden to establish a *prima facie* non-frivolous claim, and the prosecution must thereafter establish by a preponderance of the evidence that the charged offense is not barred by the double jeopardy clause. *People v Mezy*, 452 Mich 269 (1996). See also *People v Wilson*, 454 Mich 421 (1997) holding that this test applies to all constitutional jeopardy claims.

This court in *Cooper* adopted a more restrictive interpretation of the dual sovereignty doctrine than federal courts and adpted the rationale of the Pennsylvania Supreme Court in *Com v Mills*, 286 A2d 638, 642 (Pa 1971). (a completed federal prosecution bars the state from prosecuting the same crime unless the state and federal interests are "substantially different.") This court perceived the *Mills* approach as requiring Const 1963, art 1 sec 15 to prohibit a second prosecution for an offense arising out of the same criminal act unless it appears from the record that the interests of Michigan and the jurisdiction initially prosecuting the defendant are substantially different. This Court also questioned the "current vitality" of the *Bartkus* decision, and resting its decision on the Michigan Constitution, stated that it had "assign[ed] proper weight to opposing interests and give[n] some consideration to public policy." Citing *People v Beavers*, 393 Mich 554, 581 (1975) (Coleman, J., dissenting).

Under United States Supreme Court jurisprudence, prosecution under the laws of separate sovereigns do not improperly subject an accused twice to prosecution for the same offense. *United States v Wheeler*, 435 US 313, 317 (1978). In *Wheeler* it was held that at least some Indian tribes retained the inherent authority to prosecute tribal offenders, and that in such cases, under the "dual sovereignty" doctrine, a federal prosecution of tribal members on charges arising out of the same incidents for which they had already been prosecuted in tribal court did not violate the double jeopardy clause of the Federal Constitution's Fifth Amendment.

Accordingly, a federal prosecution does not bar a subsequent state prosecution of the same person for the same acts on which the federal prosecution was based; nor does a prior state prosecution bar a federal one. *Abbate v United States*, 359 US 187 (1959); *Bartkus v Illinois*, 359 US 1121 (1956); *People v Childers*, 459 Mich 216 (1998), fn 2 citing *Heath v Alabama*, 474 US 82 (1985).

As the Supreme Court stated in *Wheeler*, 435 US at 320:

> "*Bartkus and Abbate* rest on the basic structure of our federal system, in which States and the National Government are separate political communities. State and Federal Governments '[derive] power from different sources,' each from the organic law that established it. *United States v Lanza*, 260 US 377, 382 (1922). Each has the power, inherent in any sovereign, independently to determine what shall be an offense against its authority and to punish such offenses, and in doing so each 'is exercising its own sovereignty, not that of the other.' Ibid. And while the States, as well as the Federal Government, are subject to the overriding requirements of the Federal Constitution, and the Supremacy Clause gives Congress within its sphere the power to enact laws superseding conflicting laws of the States, this degree of federal control over the exercise of state governmental power does not detract from the fact that it is a State's own sovereignty which is the origin of its power."

On the other hand, the United States Supreme Court has made it clear that the "dual sovereignty" concept does not apply in every instance where successive cases are

brought by separate entities. For example, a state and municipal subdivision of the same state cannot bring successive prosecutions for offenses arising out of the same conduct. See *Waller v Florida*, 397 US 387 (1970). The Court explained that while there may be separate prosecutions for a single offense by separate sovereigns, the double jeopardy clause of the Fifth Amendment "does not permit a single sovereign to impose multiple punishment for a single offense merely by the expedient of establishing multiple political subdivisions with the power to punish crimes." *United States v Wheeler, supra,* at 321-322. Cities and counties are subordinate governmental agencies of the state because their power is granted to them by the state, whereas the states and the federal government are regarded as separate political entities because each derives it power from a different source. *United States v Wheeler, supra*; *United States v Lanza*, 260 US 377 (1922), n 1.

In the case *sub judice* the states of Michigan and Kentucky are clearly separate political sovereignties. Thus, if for double jeopardy purposes, Michigan is considered to be a sovereign entity vis-a-vis the federal government, then most assuredly Michigan is a sovereign entity vis-à-vis the state of Kentucky.

While this Court twenty eight years ago in *Cooper* seriously questioned the "current vitality" of the *Bartkus* decision, [398 Mich at p 461] the people submit that any remaining doubt cast upon the validity of the *Bartkus* decision has been resolved by the Supreme Court's decision in *United States v Wheeler*, 453 US 31 (1978).

The *Wheeler* Court reaffirmed the dual sovereignty concept and the decision in *Bartkus* and the companion case of *United States v Abbate*. The viability of the dual sovereignty doctrine was persuasively discussed by the 5th Circuit Court of Appeals in *United States v Hayes*, 589 F2d 811 (CA 5, 1979) as follows:

> While the Court has consistently expressed concern over the possible abuses of dual prosecutions, see *Bartkus v Illinois*, 359 US 121, 138 (1959) ('the greatest self-restraint is necessary when that federal system yields results with which a court is in little sympathy'); *United States v Lanza*, 260 US 377, 383 (1922)('in the benignant spirit' in which the federal system is administered, defendants should be subject to dual state-federal prosecutions only 'in instances of peculiar enormity') quoting *Fox v Ohio*, 46 US (5 How) 410, 434 (1947), and while the *Lanza-Abbate-Bartkus* doctrine has met harsh criticism, see e.g., Harrison, *Federalism and Double Jeopardy; A Study in the Frustration of Human Rights*, 17 U. Miami L. Rev. 306 (1963); Fisher, *Two Sovereignties and the Intruding Constitution*, 28 U. Chi. L. Rev. 591, 599 (1961); Grant, *The Lanza Rule of Successive Prosecutions*, 32 Colum. L. Rev. 1309, 1329 (1932), the doctrine has nonetheless been applied consistently by the Circuit Courts.... Moreover, the Supreme Court has recently reaffirmed the dual sovereignty doctrine. See *United States v Wheeler*, 435 US 313 (1978) (Indian tribe and federal government are dual sovereigns); *Rinaldi v United States*, 434 US 22 (1977) (dictum) (dual sovereignty principle is inherent in the federal system). Unless and until the Supreme Court overturns *Abbate*, appellant's double jeopardy claim must fail.

In *State v Franklin*, 735 P2d 34 (Utah 1987) the Utah Supreme Court rejected the defendant's request to abandon the dual sovereignty doctrine to prohibit the state from prosecuting him after he had already been tried by the federal government. The court declined to follow *People v Cooper*, 398 Mich 450 (1976) or *Com v Mills*, 286 A2d 639 (Pa. 1971). The Court said:

> In our view, these decisions place state judges in the dual role of a state prosecutor evaluating the interests of the state and appellate courts reviewing the adequacy of the proceedings in the federal tribunal and presumably the efficacy of the federal penal and parole systems. While we do not think our constitution necessarily must be interpreted as exactly the same protections as the federal constitution, we also do not believe the balancing test approach is mandated by the Utah Constitution, nor are we convinced it would provide the salutary effects anticipated. Rather, it appears likely to lead to uncertainty on the part of prosecutors and defendant, which might well result in an increase in litigation and appeals respecting the dual-sovereignty principle. We are troubled also by the transitory nature of the protection offered the individual under this balancing test approach: it exists only when the interest of the state is perceived as weak, disappearing when the state's interest is perceived as great.

The court also observed that the courts of New Hampshire and Montana have been more sweeping in surrendering their states sovereignty, citing *State v Hogg*, 385 A2d 844 (1978) (holding that the double jeopardy clause of the New Hampshire Constitution bars New Hampshire from retrying a defendant who has been acquitted in a federal prosecution; the court did not extend its ruling to cases, such as that at bar, in which the federal prosecution results in a conviction). The Court did not agree with the New Hampshire approach because it relinquishes unnecessarily the power of the state to try and punish those who break its laws. "Under the rule urged by defendant, the state of Utah would be foreclosed from legitimate prosecution by the errors, omissions, or inadequacies of federal prosecutions and would be unable to try even a defendant who had received a federal pardon or whose conviction was reversed by a federal appellate court because of an error in the federal trial. See e.g, *State v LeCoure*, 491 P2d 1228 (Mont 1971) (defendant acquitted of federal charges based on assault of FBI agent because federal prosecutor did not prove agent was acting within his official capacity at time of assault and double jeopardy barred state law assault chares).

In *Ex Parte Ray Charles Gary*, 895 SW2d 465 (Tex App1995) the court likewise declined to follow the Pennsylvania Supreme Court's decision in the *Mills* case. Adopting the dissent in *Mills* Justice Boyd points out that the court's rational would require the trial judge to review and pass judgment upon the sentence imposed by another court in the judicial system of a separate sovereign. The complexity of balancing approach is explained further:

> Presumably, in making a case-by-case determination, the judge would also need to review the entire penal, probation and, where permissible, parole system of the other jurisdiction to determine whether the reviewing state's "interest" was protected. Such a review would create

> varying results from court to court and could increase the inequities of punishment assessed in different courts to different defendants charged with similar offenses. It also leaves open the question of what course, if any, the reviewing court might follow if, after a determination that the reviewing state's interest had been satisfied by a prior conviction and that subsequent prosecution was barred, the prior conviction in another jurisdiction was set aside on appeal.

In rejecting the defendant's request to implement a balancing approach, the court followed established Texas precedent that prosecutions for the same transaction which violate both state and federal statutes may be prosecuted by both judicial systems. The court concluded by stating that: "[E]ven if that were not the case and this court of intermediate jurisdiction was free to consider a rule such as that adopted by the Pennsylvania courts, we are not persuaded that it would be wise to do so." See *State v Lasky*, 646 NW2d 53 (Wis. App. 2002) where the Wisconsin Court of Appeals declined to follow the rationale of the *Mills* decision. See also *Booth v State*, 436 So2d 36 (Fla 1983) where the Florida Supreme Court declined to follow either *People v Cooper* or *Com v Mills*.

While States are free to provide greater double jeopardy protection to criminal defendants, and indeed *Bartkus* appears to invite such action [see *Bartkus* at 138] the people submit that this Court should reconsider the *Cooper* decision and its interpretation of Const. 1963, Art. 1 sec. 15 and hold that Michigan defendants should be given no greater protection than allowed by the United States Constitution. The overwhelming majority of state courts hold that both the United States and their own constitutions permit dual prosecutions by the state and federal government. *People v Mezy*, 453 269, 381 (1996), fn 14 and citations. On the other hand, of the more than 20 states which have rejected the dual sovereignty doctrine, they have done so by statute. See *Lavon v State*,

586 SW 2d 112, 115 (Tenn. 1979) and citations. See also Anno., *Conviction or Acquittal in Federal Court as Bar to Prosecution in State Court for State Offense Based on Same Facts—Modern View*, 6 ALR 4th 802, 816-824 (1981), superceded by 97 ALR 5th 201 (2002-2004)

Prior to this court's decision in *Cooper* similar state provisions had been interpreted to permit successive state and federal prosecutions on the basis of the same "dual sovereignties" analysis employed in the *Bartkus* case, and given the need for stability in constitutional interpretation, the better reasoned decisions were not persuaded to depart from that precedent. See e.g., *Beard v State*, 485 SW2d 882 (Tenn. Cr. App 1972). Other states have adopted a similar approach to that adopted by the vast majority of other states in which the question has not been settled by statute. See e.g., *State v Castonguay*, 240 A2d 747 (Me 1968); *State v Cooper*, 255 A2d 232 (NJ 1969); *State v Rogers*, 566 P2d 1142 (NM 1977); *State v West*, 260 NW2d 215 (SD 1977); *State v Shafranek*, 576 NW2d 115 (Iowa 1999); *State v Chavez*, 668 NW2d 89 (SD 2004).

The people recognize that this Court may, where justified, construe the Michigan Constitution so as to impose different requirements than obtain under parallel provisions of the federal constitution. *People v Collins*, 438 Mich 8, 28 (1991). The people submit however, that such undertaking "*should occur only when there is a compelling reason to do so.*" *Collins*, *supra*, citing *People v Nash*, 418 Mich at p 214. (Court's emphasis) See also *People v Mezy*, 453 Mich 269, 281, (1996) citing *People v Perlos*, 436 Mich 305, 313 (1990), n 7.

In *State v Carpenter*, 2002 WL 1482799 (Tenn Crim App) the defendant argued that evolving standards of fairness required the abandonment of the dual sovereignty

doctrine. The court declined the grant the defendant's request citing *Lavon v State*, 586 SW2d 112 (Tenn. 1979) where despite an expression of "grave doubts as to the inherent unfairness of any procedure that forces an individual to defend himself against multiple prosecutions for the same crime," the court expressed "even graver doubts as to the propriety of ... abandoning such a firmly established rule of law, absent *compelling circumstances*." Id at 114. (emphasis added). The court held that "the question of the propriety of successive state and federal prosecutions for the same act, being essentially one of policy, is 'committed to the intelligence and discretion' of the legislature and we leave it to their considered judgment." Id at 115.

The people submit that this Court in reconsidering the *Cooper* decision, should likewise, determine that the matter of limiting dual sovereignty is for the legislature. The legislature has done so in enacting MCL 3337.704 in the Public Health Code, but not in other areas. In the words of this Court in *Collins*, *supra*, and the Court in *Carpenter*, *supra*, this Court should find that there are no "compelling" reasons to impose different requirements under Const 1963, art 1 sec. 15 than obtain under the Fifth of Amendment of the United States Constitution.

The people submit that in the case *sub judice* the state of Michigan and the state of Kentucky are separate sovereigns and that the state of Michigan should be permitted to prosecute defendant Davis under separate criminal statutes even if the offenses are based on the same conduct. Better reasoned decisions throughout the country have held that successive prosecutions by different sovereigns do not violate due process. See e.g., *State v McKenna*, 453 A2d 435 (1982)(State constitution); *State v Castonguay,* 240 A2d 747 (Me 1968).

The view that successive prosecutions are unfair as a matter of state law unless the second sovereign demonstrates a substantially different interest from the first which is unsatisfied by the prior conviction should not be the prevailing standard in Michigan. *People v Cooper*, 398 Mich 450 (1976)

The people maintain this Court should not place restrictions on the practice of successive prosecutions in the absence of a legitimate constitutional basis for such holding. This Court's doubt about the continuing validity of the *Bartkus* decision has been dispelled by the United States Supreme Court in *United States v Wheeler*, 455 US 313 (1978) and *Heath v Alabama*, 474 US 92 (1985). In *Heath* the Court specifically upheld successive prosecutions in Alabama and Georgia. In *Heath* the defendant pled guilty to a murder charge in Georgia in exchange for a sentence of life imprisonment. He was later indicted for murder during a kidnapping in Alabama, was tried and convicted and sentenced to death. The Supreme Court held that under the dual sovereignty doctrine successive prosecutions was permissible.

In the case at bar defendant Davis was charged in Kentucky with theft by unlawful taking or disposition over $300.00 contrary to KY Rev Stat Ann 514.030, he pled guilty to attempted theft by unlawful taking and was sentenced to 1 year in jail. His sentence however, actually involved a 2 year conditional release and he never served any jail time whatsoever. [Appendix 3a-5a]

The people respectfully submit that under these circumstances they should be permitted to proceed against defendant Davis for the Michigan offenses of UDAA and Receiving and Concealing Stolen Property as charged by the Genesee County

Prosecuting Attorney. Even under *Cooper* it cannot be said that Michigan's interests were vindicated by the Kentucky prosecution.

Relief

Wherefore, the people pray that this Honorable Court reverse the Court of Appeals with direction to the trial court that the charges of UDAA and Receiving and Concealing Stolen Property be reinstated.

Date: July 28, 2004

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